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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LES COHEN,

Plaintiff,

v.

GLYNIS TURRENTINE; and SUNTRUST
MORTGAGE, INC.; and U.S. BANK
NATIONAL ASSOCIATION AS
TRUSTEE FOR JP ALT 2006-A2; and
MONTEREY AT THE LAS VEGAS
COUNTRY CLUB; and LAS VEGAS
INTERNATIONAL COUNTRY CLUB
ESTATES; DOES 1 through 10, inclusive
ROE CORPORATION, 1 through 10,
inclusive,

Defendants.

CASE NO. 2:15-CV-00412-GMN-GWF

**DEFENDANT SUNTRUST
MORTGAGE'S REPLY IN SUPPORT
OF RESPONSE TO ORDER TO SHOW
CAUSE AS TO WHY THE COURT
SHOULD NOT REMAND THIS ACTION
TO CLARK COUNTY DISTRICT
COURT FOR FAILURE TO SATISFY
THE DIVERSITY JURISDICTION
REQUIREMENTS SET FORTH IN 28
U.S.C. §1322**

Defendant SunTrust Mortgage, Inc. ("SunTrust"), by and through its counsel of record,
the law firm of Snell & Wilmer L.L.P., hereby responds to the Court's Order to Show.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff fraudulently joined Turrentine and the HOA Defendants solely for the purposes of
defeating diversity jurisdiction, and thus their citizenship should be disregarded for purposes of
determining diversity. Co-defendants, Glynis Turrentine ("Turrentine"), Monterey at the Las

Vegas Country Club and Las Vegas International Country Club Estates (Monterey at the Las Vegas Country Club and Las Vegas International Country Club Estates are collectively referred to as the “HOA Defendants”) are Nevada citizens, but fraudulently joined. The language in the Complaint, in addition to the recorded documents, establishes that Turrentine and the HOA Defendants are not asserting an adverse interest in the Property. Moreover, the Complaint fails to state a cause of action against Turrentine or the HOA Defendants.

II. LEGAL STANDARD

This Court has original jurisdiction of the Action under 28 U.S.C. § 1332, as complete diversity exists between the Plaintiff and the properly named Defendants. As such, a Defendant may remove the Action to the District Court of the United States for the district embracing the Court where the Action is pending. *See* 28 U.S.C. § 1441.

1. Legal standard to disregard citizenship for purposes of diversity.

A fraudulently joined defendant will not defeat removal on diversity grounds. *Silon v. American Home Assurance Company*, 2009 WL 1090700, * 4 (D. Nev. 2009) (citing *Ritchey v. Upjohn Drug Co.*, 139 F. 3d 1313, 1318 (9th Cir. 1998) (“fraudulently joined defendants will not defeat removal on diversity grounds.”) “[A] defendant must have the opportunity to show that the individuals joined in the action cannot be liable on any theory.” *Ritchey*, 139 F. 3d at 1318. “If the plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious according to the settled rules of the state, the joinder of the resident defendant is fraudulent.” *McCabe v. General Foods Corp.*, 811 F. 2d 1336, 1339 (9th Cir. 1987.)

“Claims for fraudulent joinder are reviewed on a standard similar to or more lenient than the standard for motions to dismiss.” *Knutson v. Allis-Chalmers Corp.*, 358 F. Supp. 2d 983, 995 (D. Nev. 2005) (citing *Sessions v. Chrysler Corp.*, 517 F.2d 759, 761 (9th Cir.1975) (noting that to the extent appellant's case could withstand a motion to dismiss, the joinder of claims against Defendants was not fraudulent); *Bertrand v. Aventis Pasteur Labs., Inc.*, 226 F.Supp.2d 1206, 1213 (D.Ariz.2002) (noting that the standard for fraudulent joinders is more lenient than that employed in motion to dismiss inquiries). Here, Plaintiff is seeking to quiet title and enjoin U.S. Bank and SunTrust from foreclosing on the Property. As Turrentine and the HOA Defendants no

1 longer have any interest in the Property and, more importantly, as they are not asserting an
 2 interest in the Property, there is no reason for them to respond to the Complaint or participate in
 3 this lawsuit. As established by Plaintiff's Affidavit of Due Diligence, Plaintiff cannot locate
 4 Turrentine, let alone establish that she is now claiming some sort of adverse claim on the
 5 Property. Both the HOA Defendants and Turrentine's deadline to respond to the Complaint has
 6 long passed, yet Plaintiff has not filed a default against either.

7 *2. The plain language of the Complaint establishes that Turrentine and the HOA were*
 8 *fraudulently joined.*

9 The language of the Complaint clearly shows that Plaintiff is not asserting any viable
 10 claims against Turrentine or the HOA Defendants. This Court has recently addressed fraudulent
 11 joinder in the context of an identical HOA "super-priority" lien complaint, finding that the
 12 inclusion of a defendant in the same position as Turrentine (i.e., the original
 13 homeowner/borrower) constituted fraudulent joinder and therefore upheld removal and denied
 14 remand. *Weeping Hollow Ave. Trust v. Spencer*, 2:13-cv-544 JCM-VCF, 2013 WL 3270556, at
 15 *2-3 (D. Nev. June 26, 2013) (unpublished.) In *Weeping Hollow*, based on the language in the
 16 complaint, the Court held that the plaintiff's foreclosure "pursuant to NRS 116 extinguished [the
 17 original homeowner/borrower's] rights or interest in the property" and thus the original
 18 homeowner/borrower "is a fraudulently joined defendant and is dismissed from the action." *Id.*

19 Likewise, in the Complaint at issue, Plaintiff alleged that "the interest of each of the
 20 defendants, if any, has been extinguished by reason of the foreclosure sale, which was properly
 21 conducted with adequate notice given to all persons and entities claiming a recorded interest in
 22 the subject property and resulting from a delinquency in assessments due from the former owner,
 23 to Monterey at the Las Vegas Country Club, pursuant to NRS Chapter 116 and *SFR Invs. Pool 1,*
 24 *LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014)." See Amended Complaint at ¶¶ 12 & 17,
 25 respectively. Additionally, there is absolutely no specific mention of Glynis Turrentine in the
 26 Complaint, apart from the statements regarding jurisdiction, let alone any viable causes of action
 27 pled against her. Plaintiff's Response does not establish otherwise.
 28

1 It is also clear from a plain reading of the Complaint that Plaintiff is purely seeking to
 2 avoid the holders of the First and Second Deed of Trust (U.S. Bank and SunTrust) from
 3 foreclosing on the Property. The First Claim For Relief is seeking declaratory relief and quiet
 4 title finding that, “any attempt to transfer of title to the Property through a non-judicial
 5 foreclosure sale pursuant to either the First Deed of Trust or the Second Deed of Trust would be
 6 invalid.” *See* Complaint ¶ 23. The Second Claim For Relief is only asserted against U.S. Bank
 7 and SunTrust. Finally, the Third Claim for Relief for slander to title alleges that “defendants have
 8 made adverse claims that conflict with Plaintiff’s claim to title and constitute a cloud upon title.”
 9 *See* Complaint at ¶ 31.

10 Plaintiff claims that it “is in settlement negotiations with the HOA Defendants to settle
 11 ‘claims’ and that he has agreed that no responsive pleading would be required until the action had
 12 been remanded or a final order as to the instant order to show cause was issued.” Plaintiff
 13 provides no explanation as to what “claims” he is attempting to settle with the HOA Defendants
 14 and is completely silent as to Turrentine. It seems contrary to the purpose of the Complaint to be
 15 negotiating with Defendants you contend have no interest in the Property. Further, there is no
 16 evidence that Turrentine or the HOA have made any adverse claims that conflict with Plaintiff’s
 17 claim to title. In fact, the evidence shows otherwise, as the HOA released both liens against the
 18 Property following the foreclosure sale. Simply asserting a cause of action as to “all Defendants”
 19 does not mean that Plaintiff has asserted a viable cause of action against Turrentine and the HOA
 20 Defendants. Unlike Turrentine, SunTrust has a validly recorded Deed of Trust on the Property,
 21 which was not released, as that of the HOA. However, in attempts to defeat complete diversity
 22 Plaintiff added the former owner and the HOA as parties.

23 *3. The claims asserted against Turrentine fail as a matter of law.*

24 In *Chandler v. NDeX W., LLC*, the Ninth Circuit affirmed the district court’s decision that
 25 defendants were fraudulently joined because Plaintiff “failed to allege the necessary elements of
 26 any of the five state law causes of action against them.” 571 F. App’x 606, 608 (9th Cir. 2014)
 27 (*citing* Hay v. Hay, 100 Nev. 196, 678 P.2d 672, 674 (1984) (internal citations omitted)). While
 28

1 Plaintiff has identified Turrentine as a party to this action, Plaintiff has not alleged any conduct by
2 Turrentine in support of its claims for quiet title and declaratory relief.

3 To succeed on its quiet title claim pursuant to NRS 40.010, Plaintiff must allege that
4 Turrentine has asserted an adverse ownership interest in the Property. However, Plaintiff's
5 Complaint does not allege that Turrentine has asserted any claim to the Property. To the contrary,
6 Plaintiff's sole assertion is that Turrentine "was the owner(s) of the Property. . . .", conceding that
7 Plaintiff is currently not asserting an interest in the Property... (Compl. ¶ 2)(emphasis added.)
8 Additionally, Plaintiff makes no specific mention of Turrentine following the jurisdictional
9 statements. It is undeniable that a borrower's property interest is extinguished by a foreclosure
10 sale triggered by her own default. Significantly, since the time of the HOA foreclosure sale
11 Turrentine: 1) is not alleged to have asserted any ownership interest or claim of title in the
12 Property; 2) presumably no longer resides in the Property; 3) has done nothing to indicate an
13 intent to assert an ownership interest in the Property; and 4) has recorded no encumbrances
14 against the Property. As such, Plaintiff's claims against Turrentine fails as a matter of law
15 because Turrentine cannot and has not asserted any interest in the Property, and the Plaintiff has
16 not alleged any such interest. Thus, Turrentine should not be considered for purposes of
17 diversity.

18 *4. The claims asserted against the HOA Defendants fail as a matter of law.*

19 The Complaint alleges that the HOA Defendants "claim[] a lien upon the property for
20 assessments in an amount of excess of that to which they may be entitled pursuant to NRS
21 116.3116" (Compl. ¶ 15); however, the both of the HOA Defendants filed releases of their
22 recorded liens after the foreclosure sale. See RJN Exhibits 12 & 13. The HOA Defendants
23 directed the foreclosure sale, and after receipt of the proceeds therefrom, released their liens in
24 full against the Property well before the Complaint was filed. As such, there is no legal basis upon
25 which the HOA could assert any adverse claim to the property in question. As such, Plaintiff's
26 claims against the HOA Defendants fail as a matter of law because the HOA Defendants cannot
27 and have not asserted any interest in the Property. Thus, the HOA Defendants should not be
28 considered for purposes of diversity.

1 **III. CONCLUSION**

2 Based on the foregoing, the pleadings, facts and relevant law establish that the citizenship
 3 of Turrentine and the HOA Defendants should be disregarded for determining whether complete
 4 diversity exists. As U.S. Bank and SunTrust are the only properly named Defendants, complete
 5 diversity exists and this matter should not be remanded back to Clark County District Court.
 6 Additionally, as the amount in controversy is satisfied and the Petition for Removal was timely,
 7 this Court has subject matter jurisdiction over this action.
 8

9 Dated: April 15, 2015

SNELL & WILMER L.L.P.



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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **REPLY IN SUPPORT OF RESPONSE TO ORDER TO SHOW CAUSE REGARDING REMOVAL** by the following method and addressed to the following:

 X via CM/ECF electronic service

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DATED this 15th day of April, 2015.


An employee of Snell & Wilmer L.L.P.

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